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SUBJECT: UNCERTAINTY ABOUT PRESIDENCY COUNCIL, PRESIDENTIAL
VETO AUTHORITY AFTER NEXT ELECTION

REF: A. 09BAGHDAD 1959
[1](#)B. 09BAGHDAD 3340
[1](#)C. 09BAGHDAD 3299
[1](#)D. BAGHDAD 34

Classified By: Ambassador Christopher R. Hill for reasons 1.4 (b) AND (d).

[1](#)1. (C) SUMMARY AND COMMENT: The Constitutional Review Committee of parliament drafted a series of proposed constitutional amendments in July 2009. If approved by an absolute majority in parliament before the end of the current term in mid-March, the Constitution provides that the amendments would then have to be put to a popular referendum within 60 days. The principal draft amendment would establish a second legislative body, the Federation Council, by 2014, and extend the term and powers of the Presidency Council until the Federation Council is in place. Once the Federation Council is established, the Presidency Council is abolished and the Presidency as articulated in Articles 67-75 of the Constitution is established. The extension would maintain the veto power held by the three major ethnosectarian groups represented in the Presidency Council. The question of the Presidency Council's future may reflect a growing rift between most Shi'a leaders and their Kurdish and Sunni Arab counterparts. Many Shi'a believe the Presidency Council was politicized to serve limited interests, and seem to prefer the Federation Council or a single, empowered president. Widespread confusion regarding the future of executive veto authority is apparent, and has forestalled a sense of urgency about the need to act on this issue. If left unresolved, it will likely complicate negotiations about government formation. END SUMMARY AND COMMENT.

THE ARTICLE 142 AMENDMENTS PROCESS

[1](#)2. (C) Article 142 of the 2005 Iraqi Constitution directed the Council of Representatives (COR) to form a committee to propose constitutional amendments within four months. The Constitutional Review Committee (CRC) finished drafting approximately 60 proposed amendments in July 2009 (ref A) - four years behind schedule - but has not yet submitted the package to parliament for consideration. The most significant proposed amendment would establish by 2014 a second legislative body, the Federation Council (FC), with authority to review and veto legislation referred to it by parliament. The COR would have the power to override an FC veto with an absolute majority vote. (COMMENT: CRC advisers told embosffs December 23 that the intent of the drafters of the Constitution and CRC members was to establish a legislative council to focus on distribution of powers issues, such as central-provincial and central-regional issues. The establishment of an FC is mandated by Article 65 of the Constitution, which provides that the FC shall include representatives from the regions and governorates and that a law passed by a two-thirds majority of the COR

shall regulate its formation, membership conditions and competencies. The FC contemplated in the proposed constitutional amendments appears to play a more substantive role in the legislative process than that contemplated by the drafters. It is not clear whether the FC would be empowered to veto all legislation or only that pertaining to regional and governorate matters. END COMMENT.) This amendment would also extend the term and powers (including the veto) of the Presidency Council (PC) until the FC is in place. The Constitution, if not amended, would phase out the PC at the end of the current parliamentary term (March 15, 2010).

13. (C) Article 142 (second) of the Constitution calls for the proposed amendments to be presented in a single package to the COR. The CRC could choose to present an abridged package to the COR, including only the priority amendments rather than all 60 proposed amendments, to facilitate approval by the requisite absolute majority. However, CRC Chair Humam Hammoudi told POL M/C January 4 that he wanted to submit the entire package, because amendments entertained by the next parliament would be subject to tougher passage requirements under Article 126, which calls for approval by two-thirds of deputies, rather than an absolute majority, of the COR. After COR approval, the proposed amendments must be put to a public referendum within 60 days. The referendum on the amendments is successful if approved by a majority of voters, and if not rejected by two-thirds of the voters in three or more governorates. (NOTE: Legal advisers to the CRC told poloffs that the last provision was included in the Constitution at the behest of the Kurds, who control three governorates. END NOTE.) If the CRC amendments, in some form, are approved by the current COR in the very near future, the

referendum could be timed to coincide with national elections on March 7.

AMBIGUITY ABOUT VETO AUTHORITY

14. (C) Embassy legal experts and U.S. advisers to the CRC acknowledge the ambiguity in Article 73 (third) of the Constitution, which does not provide clear veto authority. Rather it states that the President shall assume the power to "ratify and issue the laws enacted by the COR. Such laws are considered ratified after fifteen days from the date of receipt by the President." Moreover, there is no prescription offered in the Constitution to address a presidential veto. This contrasts with the clear veto authority granted to the Presidency Council in the Constitution's transitional provisions. Under Article 138 (fifth), legislation and decisions enacted by the COR, with limited exceptions, "shall be forwarded to the Presidency Council for their unanimous approval," subject to a legislative override. According to these experts, the most plausible interpretation of Articles 73 and 138 is that the PC's veto authority does not extend to the new President under the next term of government. However, Iraqi political leaders vary widely in their interpretation of whether the Constitution, as currently drafted, allows the President to retain the veto after the next government is formed (refs B-C).

15. (C) CRC Chair Humam Hammoudi (one of the drafters of the Constitution and the ISCI bloc leader) and Deputy Chair Selim al-Jebouri (IIP) told POL M/C January 3 and 4, respectively, that the Iraqi system envisioned a ceremonial presidency, with no veto power. Hammoudi explained that the drafters of the Constitution and members of the CRC intended that the FC would replace the safeguard mechanism represented by the PC, by exercising veto power over legislation approved by the main chamber and bringing in legitimate regional and provincial interests. Hammoudi and Da'wa bloc leader Ali al-Adeeb separately argued to POL M/C that the PC is a flawed institution because its veto power had been misused to represent narrow political interests, rather than to reflect broader national concerns voiced by all three members. Jebouri and Shi'a MP Mohamed al-Haydari

(INA/Independent) acknowledged these problems, but emphasized to us the value of extending the PC to foster consensus between the three main ethnosectarian groups.

OBSTACLES TO PASSAGE OF AMENDMENTS

¶6. (C) There are at least two obstacles to passage of the CRC amendments package: the short time left before the end of the current COR term, and the objections of several political blocs to specific amendments. Speaker Sammarraie (Sunni, Tawafuq/IIP) lamented the "lack of discipline" in parliament, and told POL M/C on January 4 that he and the PM would prioritize passage of the 2010 budget before the end of the month (ref D). He made clear he does not view moving this package of amendments through the COR and expediting ratification by referendum as a high priority. Maliki's senior advisor, Sadiq Rikabi, assessed that it would be "nearly impossible" to pass the amendments due to timing, telling POL M/C December 21 that MPs were more focused on their campaigns than on reviewing legislation (ref B).

¶7. (C) Several political blocs are opposed to a number of proposed amendments in the package. Kurdish Alliance List (KAL) MP Friad Rwanduzi told CRC legal advisers in late December that the Kurds were concerned about the possible impact of amendments to Article 110 regarding "exclusive" authorities of the federal government, to include foreign policy. KAL bloc leader Fu'ad Masoum told poloffs January 7 that the Kurds would oppose any changes to federal power that infringe on the authority of the Kurdistan Regional Government (KRG), but emphasized that they are willing to support extension of the PC, in order to ensure a balance of power between the ethnosectarian groups. He added that they would oppose any initiative by which only the President - in the absence of a Presidency Council - would retain veto power in the next government, observing that Kurds "have good historical reason" to fear a powerful presidency.

¶8. (C) Jebouri noted to POL M/C a rift among Sunni political leaders on the CRC package; while his Tawafuq coalition was in favor, he said that MP Saleh Mutlaq and his allies in the newly-formed Iraqiyya Coalition were opposed. However, DPM Rafi al-Issawi, a partner in the Iraqiyya Coalition, expressed to POL M/C strong support for a PC extension.
(COMMENT: It is likely that Iraqiyya members like MP Osama

al-Nujaifi are frustrated that the CRC did not address issues at the heart of the GOI-KRG divide, including hydrocarbons and Kirkuk. END COMMENT.) Jebouri and Sammarraie noted that Sunni COR members generally favored postponing a public referendum on the CRC amendments, if approved, until after the upcoming election. Hammoudi told POL M/C that constitutional amendments are a sensitive issue relative to the Sunni street and cannot be addressed at this time. He said that the Sunnis accept the amendments but do not want a referendum on the constitutional amendment held in conjunction with the national election, and that Speaker Sammarraie, as an IIP politician seeking reelection, would likely tread carefully.

¶9. (C) While the Prime Minister's State of Law Alliance (SLA) favors the establishment of the Federation Council, Maliki allies are opposed to the extension of the PC. Adeeb argued to POL M/C January 4 that a strong President (implying one who exercises a veto) would be better than extension of the PC. He believed that the Iraqi Constitution provided for the President to keep veto authority after the dissolution of the PC, but acknowledged that the relevant language was unclear. Badr bloc leader Hadi al-Amiri observed December 22 that an empowered president was important, but claimed there was no appetite among Iraq's leaders to retain a Presidency Council. Amiri asserted to POL M/C that it was in the Iraqi people's interest to move beyond "ethnic balancing" at every level of government.

USG RESPONSE

10. (C) Ultimately, the fate of Presidential veto authority and extension of the PC will not directly affect long-term U.S. interests in Iraq. The absence of the Presidency Council will complicate consensus-building, however, since it will narrow the number of leadership positions available during government formation this spring, a key lever for forging consensus. The smaller the pie, the harder those negotiations will be. The proximity of elections compels us to consider our position. Post proposes the following course of action.

-- The Embassy recommends waiting until late January or early February to see whether momentum builds in favor of PC extension. It is possible that Maliki's SLA will drop its objection to one more term for the PC as pre-election negotiations between entities continue. Most Sunnis and the Kurds view the PC as an important balancing mechanism and SLA may be willing to accede to this point as it seeks support for forming the next government. Premature USG engagement on this issue in favor of a specific course of action could upset the Iraqi political dynamic, which should be allowed to play out.
HILL